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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 08/621,631      | 03/26/1996  | PATRICK M. BROWN     | 621.631             | 1235             |

7590 01/14/2003

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EXAMINER

MILLER, EDWARD A

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 01/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Abandonment**

Application No.

08/621,631

Examiner

Edward A. Miller

Applicant(s)

BROWN ET AL.

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 06 November 2001.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:  
  
see next page.

EDWARD A. MILLER  
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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1. The replies filed on May 16 and October 7, 2002, are not fully responsive to the prior Office Action as follows. The final action, Paper No. 34, included both rejections and a requirement for formal drawings with corrections as required in form PTO 948, part of Paper No. 6. The cover sheet, form PTO 326, at box 10 thereof, was checked, and there one finds reference to 37 CFR 1.85(a), stating that the drawings correction may not be deferred. Applicants, at the end of period for reply, extended to 6 months in accordance with 37 CFR 1.136(a), filed only a notice of Appeal, and subsequently their Appeal Brief. Such is responsive only to the rejections, not to requirements. See MPEP 1201, the second paragraph thereof. At no time did applicant file formal drawings, as required, nor any paper in regard to this drawings requirement.

§ 1.85 Corrections to drawings.

(a) A utility or plant application will not be placed on the files for examination until objections to the drawings have been corrected. Except as provided in § 1.215(c), any patent application publication will not include drawings filed after the application has been placed on the files for examination. Unless applicant is otherwise notified in an Office action, objections to the drawings in a utility or plant application will not be held in abeyance, and a request to hold objections to the drawings in abeyance will not be considered a bona fide attempt to advance the application to final action (§ 1.135(c)).

2. In accordance with current rules, 37 CFR 1.135(c), additional time to correct a deficiency may be granted only to replies to “non-final” actions. Paper No 34 was a **final** action. Further, 37 CFR 1.85(a) clearly states that a request to hold the requirement in abeyance will not be deemed “bona fide”. Thus, failure to reply to the formal drawings requirement, by rule, cannot be considered a bona fide response. No new action with a period for reply in accordance with 37 CFR 1.135(c) may be set for applicants’ failure to submit formal, corrected drawings as required.

§ 1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require.

Art Unit: 3641

The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

[Paras. (a), (b), and (c), 47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; para. (d) deleted, 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

3. Since the period for reply set forth in the prior Office action has expired, this application is held abandoned. Since the full six months expired on the day of filing of the Notice of Appeal, no further extension of time is possible under 37 CFR 1.136(a). In no case may an applicant reply outside the SIX (6) MONTH statutory period for reply set forth in an Office action. 35 USC 133.

4. Therefore, the application stands abandoned for failure to <sup>submit</sup> ~~take~~ such "complete and proper reply as the condition of the application may require."

5. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Monday-Thursday, from 10 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198. The Group fax number is (703) 305-7687.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em  
January 10, 2003



EDWARD A. MILLER  
PRIMARY EXAMINER